Supreme Court, U.S.
FILED
FEB 26 1993
OFFICE OF THE CLERK

NO.: 92-1251

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ROBERT LEE ZIMMERMAN,

PETITIONER

v.

NORTHWESTERN MUTUAL
LIFE INSURANCE COMPANY
OF MILWAUKEE, ET AL.

RESPONDENTS

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

I. INTRODUCTION

Although Petitioner believes that the reasons enumerated in the petition warrant the grant of a writ, Petitioner also believes a brief reply to the opposition raised by Respondents is warranted to correct some of the factual inaccuracies they have introduced.

II. BOTH PUBLIC AND PRIVATE RESPONDENTS HAVE ENTIRELY FAILED TO PRESENT A COHERENT BRIEF IN OPPOSITION

A. Respondents Fail To Raise any Discrepancies Regarding Petitioner's Statement of the Case

The public and private Respondents have entirely avoided

confronting Petitioner's Statement of the Case, not pointing out a single inaccuracy in it. Instead, Respondents have presented their own version of the facts in this case, versions which are entirely anecdotal and unsupported by the record evidence. There is barely a single sentence in the Factual Background (p.2-5) of the private Respondent's Brief In Opposition or in the Undisputed Facts Presented To The District Court (p. 9-20) of the private Respondent's Brief In Opposition that rings true or was established as credible evidence. In section III. below, Petitioner has addressed only some of the more glaring inaccuracies.

B. Respondents Consider the Bill of Rights An Unnecessary Burden

Each Respondent has referred to the First Amendment as a "burden." The public Respondents have gone so far as to call this case "one-of-a-kind" and certainly nothing that our highest Court should trouble with. But Respondents have misunderstood the very basis of our system of law. It is our Constitution and not this case that is "one-of-a-kind." The trivialization of our Constitution by referring to it as a "burden" is a real danger to those who seek its protection.

Respondents have not shown Tamarind Park is not a public

forum: Nor have they presented any legal justification for the warrantless arrest of Petitioner: Nor have they justified their total ban on political speech with anything other than a vague reference to litter and ambiance.

C. Respondents Admit To Participating In A Conspiracy To Injure Petitioner

Surprisingly, in their respective Oppositions each Respondent admits participating in the conspiracy to thwart Petititioner's efforts to conduct a grassroots political campaign. Each has noted at least eight encounters with Petitioner where they sought to deny his campaign

its freedom to speak out on the issues. While Petitioner sought to expose, via leafletting, the incredible breadth and depth of the corrupt practices that have ensnared Hawaii, Respondents, both participants and beneficiaries of many of those corrupt practices, used the state's police power to arrest and otherwise intimidate Petitioner and staffers.

III. GLARING INACCURACIES INTRODUCED IN RESPONDENT'S BRIEFS IN OPPOSITION

A. There Is No Parking Garage In Tamarind Park

In their Oppositions, no longer satisfied with the magical transformation of Tamarind park

into a shopping center, Respondents have now attempted to give the impression that Tamarind Park is a parking garage. Nothing could be further from the truth. Beneath Tamarind there may sit a parking garage, but there is absolutely no access to that garage from Tamarind nor is it visible from Tamarind.

In many cities beneath the parks there may be found subway tunnels, conduits of various sorts, parking garages and even shopping centers. These underground facilities and facilitators in no way transform the nature of what is above to that which is below.

B. There Are No Retail Stores At Tamarind Park

Respondents have also attempted to create the illusion that there are retail stores at Tamarind Park. But, again, this is pure fancy. There are no retail stores in Tamarind Park; they are in the office towers.

C. Tamarind Park Is Not Noticed As Private Property

Private Respondents at p.10 and public Respondents at p. 3 claim that Tamarind is marked as private property. Again, nothing could be further from the truth. In reality, there is nothing inside Tamarind or at its major entrances

announcing that Tamarind is private property.

However, embedded in the public sidewalks abutting the park, where not one passerby in a hundred would see it, much less stop to read it, there are several worn bronze plaques 5 1/2 inches wide and 3 1/2 inches high. In 1/2 and 1/4 inch lettering, these plaques read "Private Property. Permission To Use Revocable At Any Time." The plaques, as randomly embedded in the public sidewalks, give absolutely no indication of what it is that is private property and if taken literally, their placement and message would indicate that the public sidewalk was private

property and that permission to walk on it could be revoked at any time. Not Petitioner but rather the bronze plaques and those who placed them in the public sidewalks are the trespassers.

D. Tamarind Park Was Formally Dedicated To the Public In 1983 and Has Been Used As A Park by the Public Since 1983

Also at p. 10 the private Respondents claim that Tamarind was never dedicated to the public. This untrue statement is totally at odds with the record evidence (a full page newspaper advertisement dedicating Tamarind to the public and its continual, long-term use by the public). Both private and public Respondents readily admit

that Tamarind has been used by the public as a park since 1983, 365 days a year, 24 hours a day.

E. There Is Plenty of Political Activity At Tamarind Park

At p. 14 the private Respondents claim that "Neither handbilling nor political group activity has been permitted in Tamarind Park at any time." This is a very curious statement in that it runs contrary to two important facts. Firstly, the public Respondent's (at p. 15) admit that the Mayor's banner was flying in Tamarind Park and that City employee's were leafletting there at the very same time that Petitioner was arrested there for

distributing copies of our Constitution. It is a curiosity that for the entire six years (from 1983, when Tamarind was dedicated to the public and the Mayor's people took over on Friday afternoon's, to 1988 when the harassment and arrest of Petitioner was initiated) not a single trespass arrest for leafletting was made nor a single warning to city employees to cease their leafletting activities issued. The record evidence amply portrays Tamarind as the Mayor's private political preserve where each Friday afternoon he and the city co-sponsor with the private Respondents a public event, Mayor's

Aloha Friday, an event at which city personnel have openly distributed handbills and have repeatedly done so without any interference from the public or private police.

Secondly, and highly indicative of Respondent's intentional deceits upon this and the lower Courts, the private Respondent's at p. 16-17 state that Petitioner was "...free to apply to sponsor special events at Tamarind..." Such a statement is totally at odds with Respondent's expressed total ban on political activity, as above, and such an offer was never made to Petitioner.

Thirdly, Respondents readily admit that people are free to talk politics at Tamarind until they are blue in the face and often they do. Thus, the ban on political leafletting was nothing more than a sham excuse for harassing and intimidating Petitioner and his campaign staffers. There was never a single citizen complaint regarding Petitioner's campaigning at Tamarind or anywhere else.

F. The Ownership of Tamarind Park By the Private Respondents Was Not Established

At p. 8-12 the private Respondents present a description of Tamarind Park and the surrounding area claiming ownership

thereof, but the record evidence entirely fails to support that claim of ownership with credible evidence of ownership.

G. There Is No Evidence That the Private Respondents Paid Property Taxes For Tamarind Park At the Full Rate or At Any Rate

At page 9 the private Respondents claim to have paid the "usual property taxes for the entire area..." But both public and private Respondents have entirely failed to prove that such taxes were paid, submitting nothing in response to Petitioner's numerous requests for such proof. The "usual" taxes could reasonably be construed to include a lowered tax rate or basc in return for the

public's use of Tamarind as "Public Open Space," indeed, the designation under which Tamarind is recorded at City Hall.

H. Respondent's Free Speech Ban

The Court may be interested in perusing Respondents free speech ban. If so, Petitioner has reproduced it in its entirety as Appendix "A." Please note that the ban, with underlining added by Petitioner, features no date or originator, nor is there any record evidence as to how, when or by whom it was produced or to whom it was promulgated. Petitioner first came upon it buried in certain boilerplate response Respondents

had made to a request for production of documents.

I. JURISDICTION

At page -i- of their Opposition City Respondents have again attempted to mislead this Court. Petitioner had filed for a Rehearing with the Ninth Circuit which was denied on October 20, 1992. Petitioner had clearly sought a Rehearing from the Ninth Circuit (with a suggestion for en banc) and not a Rehearing en banc as suggested by City Respondents.

J. There Is Plenty of State Action In This Case

Petitioner was seized, arrested, detained and imprisoned

by the joint action of the public and private Respondents: That is state action.

Petitioner suffered a significant blow to his political campaign as a result of the conspiratorial joint actions of the public and private Respondents: That is state action.

Petitioner suffered a long prosecution that extended beyond the duration of the political campaign, a prosecution that was dropped on the day of trial without prior notice: That, too, is plenty of state action.

The co-sponsorship of Mayor's Aloha Friday by the public and private Respondents is also state

action as is private Respondent's dedication and operation of Tamarind Park as public open space.

K. Petitioner's Exasperating and Ineffectual Efforts To Gain Fundamental Discovery

At p. 5-7 private Respondents entirely miscast the procedural background of this lawsuit. The Civil Docket Sheets clearly show that Petitioner repeatedly sought fundamental discovery and was denied access to it. And although numerous depositions were requested by Petitioner, none was had, nor was Petitioner allowed even a single amendment to the Original Complaint.

L. There Was No Probable Cause To Arrest

City Respondents argument that there was probable cause to arrest a peaceable political candidate for distributing copies of our Constitution to prospective voters in a downtown park is merely ludicrous. The private Respondents at p. 35 readily admit that a warrant is required before an arrest for the distribution of pornography. But, with or without Hawaii state law that requires a warrant before an arrest where First Amendment rights are implicated, without more, why would any reasonable police officer even consider such an arrest? There are

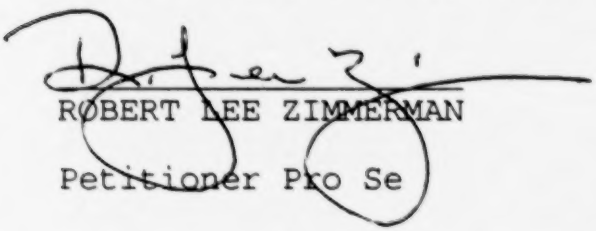
no exigent circumstances and plenty of time to obtain a warrant.

Under our Constituion those who would seize a person for peaceably distributing it to prospective voters are lawbreakers extraordinar.

IV. CONCLUSION

For the reasons stated in the Petition as supplemented by this Reply Petitioner respectfully requests that the Court grant the Petition for Writ of Certiorari.

DATED: February 26, 1993



ROBERT LEE ZIMMERMAN

Petitioner Pro Se

APPENDIX "A"

REGULATIONS PERTAINING TO THE

USE OF TAMARIND PARK/BISHOP SQUARE

1. The use of the Park can be authorized only by approved application available in the Bishop Square Management, Inc. office.

2. Groups using the Park area are assigned to designated locations only, and at days and times at the discretion of the Bishop Square Management.

3. The sale of merchandise or services is prohibited.

4. Signing of the area is subject to prior approval of Bishop Square Management and should be tasteful and professional. The use of hand

outs, flashing, lights, noise makers and other attention-getting devices is prohibited.

5. Use of the Park area is generally confined to charitable or non-profit groups, or those representing specific non-partisan community interests. Groups representing political candidates or issues are prohibited from activity.

6. Solicitation of funds, contributions signatures or participation in surveys must be passive; that is, Park invitees must voluntarily respond to approved signing and may not be actively accosted by group members. Likewise, literature may be

distributed only upon the request of the recipient.

7. The premises occupied must be left in the same condition or orderliness and cleanliness as when received.

8. The areas of the Park used by the public are not public ways but are for the use of Bishop Square tenants and the public transacting business with them. Permission to use said areas may be revoked by Bishop Square Management at any time.